



Department of Justice

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JUSTICE DEPARTMENT IMPLEMENTS THE STANDARDS DEVELOPMENT ORGANIZATION ADVANCEMENT ACT OF 2004

New Law Extends Liability Limitation To Standards Development Organizations That File For Protection

WASHINGTON, D.C. - The Department of Justice today released a statement by R. Hewitt Pate, Assistant Attorney General in charge of the Antitrust Division, regarding the Standards Development Organization Advancement Act of 2004 (SDOAA), which extends the protections provided by the National Cooperative Research and Production Act of 1993 (NCRPA) to standards development organizations (SDOs).

The NCRPA provides that certain joint ventures will have their antitrust liability assessed under the rule of reason, and that special rules for attorneys' fees apply in antitrust cases challenging certain joint ventures. In addition, it permits parties participating in joint research, development, and production ventures to limit their possible antitrust damage exposure to actual, as opposed to treble, damages by filing a notification with the Department and the Federal Trade Commission (FTC). The SDOAA permits standards development organizations to obtain the same protections provided to certain joint ventures by the NCRPA.

"Standards development organizations develop technical standards that are essential to the efficient functioning of our national economy. Congress has determined that the threat of treble damages pressures SDOs to restrict their standards development activities at a great cost to the United States. The Standards Development Organization Advancement Act of 2004 relieves SDOs from certain antitrust concerns and facilitates the development of pro-competitive standards," said Pate.

On June 22, 2004, President Bush signed into law H.R. 1086, which includes the Standards Development Organization Advancement Act of 2004 (the Act). This Act amends provisions of the National Cooperative Research and Production Act of 1993, which affords certain antitrust protections to joint ventures engaged in research, development, and production, to extend the same antitrust protections to standards development organizations (SDOs) while those organizations are engaged in standards development activity. The Act states that the term SDO does not include parties participating in the SDO.

The Act provides that the antitrust rule of reason applies to SDOs while they are engaged in standards development activities, and provides special rules for attorneys' fees in any antitrust case challenging a SDOs standards development activity. The Act also provides SDOs with the

opportunity to limit their antitrust liability for standards development activities to actual, as opposed to treble, damages. The rule of reason and attorneys' fees provisions of the Act automatically apply to all SDOs covered by the Act. However, SDOs must file a proper notification with the Department and the Federal Trade Commission (FTC) to obtain the liability limiting protections provided by the Act. Proper notifications should:

- (1) be filed not later than 90 days after the date of the enactment of the Act, or 90 days after commencing a standards development activity engaged in for the purpose of developing or promulgating voluntary consensus standards;
- (2) disclose the name of the SDO and its principal place of business;
- (3) provide documents showing the nature and scope of the standards development activity;
- (4) contain two copies of all documents submitted to the Department and one copy of all documents submitted to the FTC;
- (5) be delivered to the Department and the FTC at the following addresses:

Department of Justice
Antitrust Division
Office of Operations
Patrick Henry Building
601 D St., NW Room 10-013
Washington, DC 20530

FEDEX Zip Code: 20004

Federal Trade Commission
Bureau of Competition
Office of Policy and Coordination
600 Pennsylvania Ave., NW, Room 392
Washington, DC 20580

Any SDO may file additional notifications as are appropriate to extend the protections to standards development activities that are not covered by the initial filing or that have changed significantly since the initial filing.

Promptly after receiving a proper notification, the Department or the FTC will publish a notice in the Federal Register that identifies the SDO and describes its standards development activities in general terms. The Department or the FTC will make the notice available to the filing SDO before publishing it in the Federal Register. Notifications may be withdrawn before

publication in the Federal Register; however, no SDO will receive the liability limiting protections of the Act if its notification is withdrawn before publication.

To facilitate publication in the Federal Register, SDOs may provide the Department and the FTC with a draft notice. In addition, SDOs should provide the name and contact information of the person or persons authorized to approve the proposed notice.

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